

3/22/2023

Dear Members of the SAB,

Farming a raw food product in a public waterway is fraught with risk. I have recently been informed by my legal council that being named as the underlying license holder exposes us to personal liability. This would be similar to a restaurant who runs the money through the business but retains the liquor license as an individual. If something were to happen the liquor license holder would ultimately be held liable. The current situation puts our personal assets, bank accounts, and our home at risk in the event that there is an accident, food borne illness, serious injury or accidental death. In full disclosure, I have an open application to transfer my license from my personal name to my business name so as not to have my home and other assets exposed to liability.

For over 35 years the town of Wellfleet through its Selectboard and shellfish advisory board has recognized and allowed for people to limit their personal liability through the rights of transfer regulation. This is a matter of basic estate planning and risk mitigation that is a standard business practice. Nearly every tradesperson, restaurant, bar, or other small business has its underlying licenses named to an LLC or an S-Corp.

There is now a proposal from one Selectboard member submitted as an individual that would strip away that protection. The Selectboard did not authorize the proposal be sent to SAB nor did it discuss such the item in a public meeting.

I don't believe that we should be stripping small farmers of the same rights afforded to limit liability as all other businesses licensed in the Town of Wellfleet have. It is unnecessary, and has potential to harm the industry rather than protect it. This proposal is an attempt to balance the concerns of some while still allowing for the protections of limiting personal liability. We would never dream of requiring restaurant owners to put their personal names on their liquor licenses or business licenses. Small farmers deserve the same protections.

I understand that there is a desire to ensure that grants remain in local hands, but there needs to be a balance that both allows small farmers to limit liability and strengthens the domicile regulations. The solution is both simple and requires small changes in the regulations. The added language is marked in red, the black text is the existing regulation. This would ensure that any and all entities are controlled by domiciled residents of the town. This industry has grown and with it has come increased risks and regulatory burdens. I believe this is a responsible way to move forward while retaining the heritage of small farming. Keep in mind that over the 35+ years this has been allowed, there has never been a problem or threat. Thank you for considering this proposal to strengthen the town's domicile requirements.

Sincerely,

Michael DeVasto  
(as an individual not acting on behalf of the Selectboard)

*\*Current regs in black, proposed regs in red.*

**License Holder** - A person or persons, or a firm or corporation holding a license issued by the Board of Selectmen under the provisions of MGL Chapter 130.

## **7.8. Issuance of Licenses for Aquaculture**

**7.8.1. Eligibility Requirements:** Licenses shall only be issued to domiciled residents (See Sec.1 Definitions) of the Town, 18 years of age or older, who have the knowledge and experience to fulfill the responsibilities specified in the license, provided that the applicant has held and been documented by the Shellfish Department using a Wellfleet commercial shellfishing permit during a period of at least three (3) of the four (4) calendar years preceding the date of application for a license. Applicant shall submit copies of state-filed catch reports. OR, provided the applicant demonstrates experience in shellfish propagation and aquaculture, continuously, over at least three (3) years preceding the date of application, documented by the Shellfish Department. This shall be supported by a letter from a license holder who employed the applicant describing the type of work performed and any other information which might be relevant. The applicant shall present a detailed five-year business plan for how s/he intends to use the grant, including shellfish species, amounts and sizes, and gear to be used, access routes and any other information relevant to proposed operations. In addition, any applicant shall not show a pattern of violations of Wellfleet's Shellfishing Policy and Regulations within the last three (3) years. *Any and all Shareholders or Members that represent a controlling interest of any entity must meet the eligibility and domicile requirements set forth by the town.*

At such time as a licensee ceases to be a domiciled resident of the Town that individual shall be removed from the license. The status of all other licensees will not change. If that licensee is the sole licensee then the license shall be revoked.

## **7.9. Rights of Use and Transfer**

Licensees shall have the exclusive use of the area described in their license for the purpose of aquaculture, for the duration of their terms. No other individual may use the license without the express permission of the licensee(s). (See Section 4.9 Poaching, Section 4.10 Disturbance of Grant by Other Than the Licensee and MGL Chapter 130;Section 57, Section 63 and Section 67.)

Licensees may transfer the rights or responsibilities assigned to their license to any other individuals, companies or corporations by vote of the Selectboard, and with the express permission of all other individuals who hold license for the same area. *Any entity must be headquartered in the town of Wellfleet and all Shareholders or Members that represent a controlling interest satisfy the domicile requirements of the town.* See MGL Chapter 130; Section 58 and Section 7.8.3 Limit on Individuals Licensed to Use a Grant.)

routes and any other information relevant to proposed operations. In addition, any applicant shall not show a pattern of violations of Wellfleet's Shellfishing Policy and Regulations within the last three (3) years.

At such time as a licensee ceases to be a domiciled resident of the Town that individual shall be removed from the license. The status of all other licensees will not change. If that licensee is the sole licensee then the license shall be revoked.

**7.8.6. Limit on Size of Grant** No licensee shall hold a license for, or have use of, more than seven (7) acres in total. Each person, *shareholder or member of an entity* named on a license as a licensee shall be charged with the total acreage covered by that license. (See Section 7.3 Annual License Fee.) Individuals holding more than seven (7) acres prior to the adoption of the establishment of this limit will not be required to accept a license for a lesser acreage, but will not be eligible for a license for any additional acreage